Supreme Court, U.S.
FILED

971659 JAN 15 1998

OFFICE OF THE CLERK

No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

AREL B. HAWKINS - PETITIONER

VS

UNITED STATES - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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28 pp

QUESTIONS PRESENTED

1. How can a criminal case originate from a civil case from which the jurisdiction of the civil case is in question and in which there wasn't any criminal activity?

2. How does District court take rise to the original jurisdiction?

3. Does Federal and State jurisdiction overlap or coincide with one another?

INDEX TO APPENDICES

APPENDIX A - UNITED STATES DISTRICT COURT OF SOUTHERN DISTRICT OF INDIANA NA 94-C-0088 D/H PROCEEDING & DOCKET SHEET

APPENDIX B -UNITED STATES DISTRICT COURT OF SOUTHERN DISTRICT C - STATEMENT OF CASE LISTED AS COMPLAINT C NO-94-0088-D/H

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix F to the petition and is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of appeals decided my case was 8-18-97.

No petition for rehearing was timely filed in my case.

An extension of time to file the petition for a writ of certiorari was granted to and including 1-15-98 on 11-17-97 in Application No. A-369.

The jurisdiction of this Court is invoked under 28 U.S.C. & 1254(1).

TABLE OF AUTHORITIES CITED

CASES
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UNITED STATES V TOSIE C.A. NM 1966
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92 F2D 1037

UNITED STATES VS CLARK V FRAZER
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STATUTES AND RULES

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NO._____

_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM. 1997

AREL B. HAWKINS - PETITIONER
VS
UNITED STATES OF AMERICA-
RESPONDENT

PROOF OF SERVICE

I, Arel B. Hawkins, do swear or declare that on this date, January 15, 1998, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR A WRIT OF CERTIORARI
on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Solicitor General of the United States
Room 5614 Department of Justice
950 Pennsylvania Ave NW

Washington DC 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 1-15-98

_____

Signature

Appendix B

Statement of Case Listed on Line 1 Appendix A
NA 94-C-0088D&H Proceeding

Complaint file in United States District Court Southern Indiana on 7-6-94. This complaint was issued under the authority of law pursuant to 28 USC 1345 being jurisdiction and venue. The justice department contends that their authority arise with court under the original jurisdiction in the first instance.

Generally 28 USC 1345 states the United States may lawfully maintain suits in its own court to prevent interference with means it adopts to exercise its power of government and to carry into effect its policies.

Does 28 USC 1345 take rise of the authority within the lower court of all rules and order of the original jurisdiction of the first instance. The original jurisdiction of the first instance is only conveyed to the Supreme Court, and to them only.

In 28 USC 1345 note 11 states that statutory grant of jurisdiction to district courts in a suit brought by the United States does not purport to concur exclusive jurisdiction and leaves open the question of propriety of its exercise in particular circumstance. This is found in United States vs Tosie C.A. 10(NM) 1996 92 F2d 1037.

In 28 USC 1345 note 12 it states that Federal

District Court (claims) to have jurisdiction of any case in which the United States is a party plaintiff. This is found in US vs Clark V Frazer DC ALA 1968. 297 F supp 319.

In 28 USC 1345 note 23: due this section conferring on the lower federal courts jurisdiction over suits in which the United States is a part plaintiff is not subject to the well pleaded complaint rule although it must still meet the usual article III case or controversy requirement and assert actual governmental interest rather than act as a puppet for private parties. This is found at Federal Home Loan Bank 3D Washington DC vs Empie CA. 10 Oct 1985 778 F2d 1447. also USCA Const Art 361 ct seq 28 USC 1345.

This case begins in Orange County on a farm listed as the Hawkins Farm. These Farmer Home Administration loans are issued in good faith and are carried out by a governmental agency and is a private party. There are many governmental agencies which are called private parties. In black law dictionary agency of the United States. Definition a department, division or administration within the Federal Government. After I received the mortgage loans, I had some bad crop years. Other factors were weather, interest rates, commodities market prices, and foreign market laws. In June, 1983, I filed for reorganization under Chapter 11 bankruptcy code. This chapter 11 was in effect until July 1987. At no time in these years have I ever said I did not owe the loans and would never pay them back. I have been willing to work with FHA

and try to reach a way in which this could be resolved and some way to pay on some of this debt. I believe that FHA has targeted me for a model takeover and was totally outside the bounds of the law and courts procedure. In filing the complaint they have violated my civil rights and the rights of many others.

By using 28 USC 1345 jurisdiction and venue the lower district courts does not have the authority to foreclose on private property in a civil action. And this power and authority hasn't been handed down to them from the Supreme Court which is the Court of the original jurisdiction of the first instance. This is found in 28 USC 1345 note 11 United States vs Tosie CA 10 (NM) 1996 92 F2d 1037; also 28 USC 1345 note 23 Federal Home Loans Bank 30 Washington DC vs Empie C.A. 10 Oct 1985 778 F2d 1477 also USCA const art 39 1 et seq 28 USC 1345.

In the years from 1979 thru 1994 there have been approximately 2500 farmers in Indiana alone that have lost their property by bankruptcy or other means of foreclosure. Does the United States Justice Department take rise to be a collection agency for Farmers Home Administration and in this I believe that the lower District Court have errored by allowing this to take place in their courts such as complaints under 28 USC 1345. I also believe that the system that is used by the loan agency such as called FHA V.A. and many federal operated banks doesn't afford the exclusive authority of the collection agency it being United

States Justice Department of the Lower District Court.

Appendix C

Judgement & Decree of Foreclosure in Appendix A NA 94-C-0089 D/H Line 1

Complaint. on line 38 Appendix A judgement of decree and Foreclosure. In the time between the complaint and judgement and decree. I was represented by two different attorneys. Roger Davis's time of service is listed on line 9 in Appendix A which is 7-29-94. Within his services there were many motions and answers to motions made by me and my counsel. At no time did I or my counsel agree to settle suit by documentation. On 7/29/94. line 10 Appendix A. motion for time. On line 11. Appendix A. order granting motion. On line 14 Appendix A. answer to complaint. On line 22. Appendix A. motion of time to respond to plaintiff's motion for SJ. On line 23. Appendix A. appearance Kenneth A. Layton. Montgomery. Elsner & Pardier. for Dr Ets. On line 24. Appendix A. notice agreement by parties. On line 25. Appendix A. order granting time. On line 26. Appendix A. motion to w/o appear. On line 27. Appendix A. order granting to withdraw. On line 28. Appendix A. answer brief. On line 29. appendix A. affidavit in opposition to SJ motion. On line 35. appendix A. supplemental brief answer. On line 36. Appendix A. affidavit (supplemental). On line 37. Appendix A. order granting plaintiff's S.J. motion. On line 38. Appendix A. closed judgement to decree. On 8-7-95. line 35. Appendix A. supplemental brief and answer to plaintiff

BEST AVAILA

summary judgement motion. On 8-7-95. line 36. Appendix A. affidavit (supplemental) of Arel B Hawkins in opposition to plaintiff's S.J. motion. On 8-7-95, line 37, Appendix A, granting & decree of foreclosure. I would like the court to take a good look at lines 35, 36, 37 and 38, Appendix A. All of these appear on same date, 8-7-95. I would like to know how the plaintiff received motions for default and summary judgement. Did they take it upon themselves to hand down this motion or did the clerk of Honorable S. Hugh Dillion hand it down. Or did Honorable S. Hugh Dillion reserve the right and him only hand the motion down and its decrees. There are some unusual circumstances relating to this date: 8-7-95. line 35. 36. 37. 38. Appendix A. It would appear that the court didn't consider any of defendants motions filed on line 35. 36. Appendix A, supplemental brief answer to affidavit (supplemental). In which case, the order granting default and summary judgement was granted. In the federal rules of trial procedure. trial rule (55) default (A) entry states "When a party against whom a judgement for affirmative relief is sought has failed to plead or otherwise comply with these rules and that fact is made to appear by affidavit or otherwise. the party may be defaulted." This wasn't the case in this cause. My counsel and I weren't given notice of default or summary judgement hearing or weren't served with any certificate of service. The order of closed judgement and decree on line 38. appendix A. was served on Roger Davis attorney. Roger Davis wasn't the counsel of record at this time, 8-7-95. Kenneth Layton was the counsel of record and was on vacation in Europe and wasn't served with a

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notice of order granting plaintiff motion of default and summary judgement. Roger Davis was served with Judgement of Decree of foreclosure 8-7-95, line 38. Appendix A.

It is well noted who the attorney of record was and no error from court could be stated. On line 9, appendix A, appearance of Roger Davis, 7-29-94, appearance for defendants. On line 27, appendix A, order granting Roger Davis to withdraw as counsel for defendents, date of 3-30-95 On 3/24/95, line 23, Appendix A, appearance of Kenneth Layton for the defendents. (In every action of civil matters the defendant should be granted a reaction.) This wasn't granted to defendant. Misrepresentation of trials rules, notification not given of hearing and certificates of service not rendered to counsel of record, and without notification of proceeding; it is impossible to form a reaction by defendent. In trial rule (60)B it doesn't afford plaintiff a free hand. In rule 60(B), mistake, surprise, or excusable neglect. In rule 60 (B), I wasn't given time to move to file an appeal or hearing of relief. Time had expired on right to appeal.

In rule 60(B) 3 "whether heretofor denominated intrinsic or extrinsic" misrepresentaztion or misconduct of a adverse party. As represented by action of United States Justice Department and United States District Court of Southern District of Indiana, New Albany Division. When action becomes intrinsic, intrinsic fraud, that fraud which occurs within framework of actual conduct of trial or pertains to and effect determination of issue

presented therin and it may be accomplished by perjury, or by use of false or forged instruments or by concealment or misrepresentation of evidence. This is found in Aurrbach V Samuels 10 Utah 2d 152 349 P2d1112 1114. Fraud is "intrinsic fraud" where judgement is founded on fraudulent instrument or perjured evidence or the fraudulent action pertians to an issue involved in original action and litigated therein. This is found in Alleghany Coepv Kirby Dic NY, 218 F. Supp. 164 183. There are species of fraud which renders the document void, for example an instrument signed by one who had neither knowledge, nor reasonable opportunity to obtain knowledge. Its character or its essential terms is not enforceable even by a holder in due course because such fraud is intrinsic found UCC 3-305 (2) (C).

I believe that intrinsic fraud should be applied to motion for default and summary judgement as applied on line 37, appendix A, order granting plaintiffs summary judgement motion. Also on line 38, Appendix A, closed judgement & decree of foreclosure. On line 53, Appendix A, courtroom minutes of order to show cause hearing within the minutes of this hearing on page 33 lines 10 thru 19 of these minutes Honorable S. Hugh dillion senior judge of District Court of the Southern District of Indiana (Indianapolis Division) states: "Mr. Hawkins, you were sued to foreclose the mortgage sometime back in 1994. If you had a defence to that, it was improper for the government to foreclose the mortgage either on your real estate or on personal property. You did not do that. You

didn't appear at all. You did not hire an attorney. You didn't appear in person. Therefore, you were defaulted meaning that since you had not made an appearance in the case you were admitting that everything said in the complaint was true. This is what default amounts to."

In trial rule 60(B)4, entry of default or judgement by default was entered against such party who was served only by publication and was without actual knowledge of the action and judgement order or proceeding. All of the statement made by Honorable S. Hugh Dillion in order to show cause, line 53, appendix A, wasn't factual. I had complied with all the rules and procedures of the court. It would seem that the documentation of this cause on lines 1 thru 38 of Appendix A. It is well received by statement made by Honorable Judge that he had not the facts of this cause, nor did he possess the documentation of this cause. By reason of neglect of the officers of the court by willfully detaining documentation and the court handed down judgement without respect to defendent or counsel brief affidavit and replys.

And action taken by the courts as such mistake, suprise, excusable neglect and fraud. These actions taken by the court does not relieve them of their action, species of fraud which renders the document void. As for example an instrument signed by one who had neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms, is not enforceable even by a holder in due course because such fraud is intrinsic.

I believe that I wasn't given due process of the laws and orders of the court. There are many items and actions that the United States Justice Department, United States District Court and its officer and party plaintiff which has willfully violated my rights under the fifth and seventh ammendments and the court shouldn't have handed a Judgement and Decree of Foreclosure.

APPENDIX D

ORDER TO SHOW CAUSE

On lines 38 thru 52 appendix A all action seems to be remedial as to this cause except line 12 Appendix A, line 21 Appendix A and line 45 Appendix A.

On line 12, Appendix A, appearance of James Tucker, Tucker & Tucker Law Firm for treasurer of Orange County. On line 21, Appendix A, agreement of debt treasurer of Orange County to the summary judgement motion of plaintiff. On line 45, Appendix A, appearance of James C Tucker, Tucker & Tucker for purchaser Hill Country Farm. This seems very unusual. On one line in the Appendix A, he appears for defendant, on another line he appears for purchaser known as Hill Country Farm.

On line 21, Agreement of debt treasurer Orange County to Summary judgement motion lines 37 and 38, Appendix A. Many times I have tried to obtain a copy of this agreement on line 21, Appendix A. Although the treasurer of Orange County states that this agreement is a public record, I was told that I had to obtain a court order to obtain a copy of the agreement. I was always under the assumption that public records could be viewed and obtained without a court order.

On line 53, Appendix A, courtroom minutes on order to show cause. In this session of court I

defended myself as a pro se defendant. By means I didn't understand, the Honorable S. Hugh Dillion found me in contempt of court. He withheld sentence at that time and states defendants are to vacate the property by end of week. On line 53, appendix A, court room minutes, order to show cause. These minutes contain statements by US attorney Marsha Massey on page 16 lines 14 thru 18 as follows: "We served Mr. Hawkins with a criminal subpoena in this matter because in our application to the court for order to show cause we requested both criminal and civil contempt be entered against Mr. Hawkins. That is why he was served with a criminal subpena." Blacks Law dictionary defines criminal contempt as offenses upon the court such as a willful disobedience of a lawful writ, process order, rule, or command of court and a fine or fine and imprisonment is imposed upon the contemnor for the purpose of punishment. This is found fed r crim proc 42 18 usca & 402 in appendix A.

At no time does the court or its officer ever list criminal contempt or civil contempt with contempt of court or just contempt. So one would be led to believe when I the defendant disobeyed an order writ, or command of the court. I was served with a warrant for arrest on May 6, 1996. Within that warrant it states I was in violation of an order of court which is defined as criminal contempt in violation of title 18 usc 401(3). The warrant only states the finding was contempt of court and wasn't defined. You could assume that it would be criminal contempt of court. On May 6, 1996,

Honorable S Hugh Dillion issued warrant for arrest for failure to comply to an order of the court. By failing to abide by this. Arel B. Hawkins was in contempt of court. In this order the brief description of offence states contempt of court. You could also assume that it would be criminal contempt of court but it doesn't state that. In the court of law we cannot assume anything. Statements that we make must be specified and the order of the court should be also. This contempt of court is in violation of title 18 USC 401(3). On May 6, 1996, I was arrested by Orange County Sheriff, Clarence Switzer and was taken to the Orange County jail and was placed in the custody of United States Marshal service. About 1600 hours I was transported to Indianapolis, Indiana, and was placed in the Marion County jail. Does this incarceration concur a sentence or a condition. On line 63, Appendix A, notice & order to contemnor Arel Hawkins, Honorable S Hugh Dillion. It was issued on 5-8-96. This order states the court has determined that in order to coerce the compliance of Arel B Hawkins with it lawful orders, Arel B Hawkins has been remanded to the custody of United States Marshall until such time as he is purged from contempt. This contempt isn't defined whether it is criminal contempt or whether it si civil contempt.

The courts states that the purpose of civil contempt imposed against Arel B Hawkins is entirely remedial. Does civil contempt become remedial only after it is defined. Does criminal contempt become remedial after it is defined.

Black law dictionary defines civil contempt as "not an offence against the dignity of the court but against the party in whose behalf mandate of the court was issued and a fine is imposed for his indemnity". After I was arrested I was placed in the Marion county jail for 3 ½ days. On line 63, appendix A, entry & order states Arel B Hawkins was ordered released from custody of United States Marshall and order of contempt of Judge Dillion. This order doesn't state criminal or civil on contempt. The release order states that the condition of the order had been met and I was purged of contempt and by agreeing to condition of release I was released from the custody of the United States Marshal.

At no time in all the warrants, orders of court is the violation ever defined whether it is criminal or civil. I believe that each offense hasn't been given a definition and should be listed on each document that is in the course of law and in all proceedings within the course of law.

Appendix E

Courtroom Minutes & Appearance

On 5-9-96, on line 2, appendix E, warrant was issued and the warrant states that I was arrested on an information warrant and I was charged with contempt of Court in violation of title 18 USC 401(3). The charge didn't specify whether it is criminal or civil contempt. On line 3, Appendix E states charges & rights & penalties need to be explained. Charges that read was contempt of court and wasn't specific as to which one of the contempts and the plea was not guilty.

Also, line 3, Appendix E, I was released on own recognizance with personal surety pending further proceeding. On line 5, appendix E, state reassigned from Judge Barker to Judge Dillion Court. If I was in contempt of court in Honorable S. Hugh Dillion Court, how could this case be brought before Honorable Sara Barker? On line 6, appendix E, order assigned court trial to Judge Dillion 6-25-96. Also on line 6, Appendix E, this case is reassigned from Judge Dillion court to Judge Barker. On line 7, Appendix E states entry vacates court trial to 7/10/96 9:30 am in Judge Barker court.

By admission of the plaintiff this action stems from a civil case. This case being no 94-C-0088-D&H. The question I would like the court to answer is how this charge of contempt of court got into Honorable Sara Barker's court when I was found in contempt of court in Honorable S Hugh Dillion's

court and Honorable S Hugh Dillion states on the release document that all contempt of courts had been purged. Also, I have tried to obtain a copy of the release order given by Honorable S Hugh Dillion and the United States Justice Department, Indianapolis Division, states it is a sealed record and I could not get one without a court order. Plaintiff also states that I had been listed as a national security risk for what reason it is unknown to me.

In Black law dictionary definition of purge is "to cleanse, to clear or exonerate from some charge or imputation of guilt or from a contempt". Black law dictionary defines double jeopardy as "a fifth amendment guarantee enforceable against states through fourteenth amendment, protects against second prosecution for same offense after acquittal or conviction, and against multiple punishment for same offense." This is found North Carolina vs Pearce 395 us 711, 89 s ct 2072, 23 led.2d 656.

The evil sought to be avoided is double trial and double conviction not necessarily double punishment. This is found in Breed et al v Jones 421 U.S. 519, 95 S.C.T. 1779, 44 led 2d 346.

This is documented fact that I was charged with contempt of court on May 6, 1996, on line 61, appendix A. I was arrested on contempt of court and was purged by Honorable S. Hugh Dillion on line 2, Appendix E. I was arrested on 5/9/96 on a charge of Contempt of Court. In these proceeding the court or it officer do not state nature of offense. By being arrested and charged with only contempt

of court in both infractions orders, warrants, this is clearly a case of double jeopardy.

Appendix G

Conclusion

In conclusion of this petition I believe as a property owner I am complied as a citizen of this great land to comply to the very letter of law. And by doing this I can follow the pursuit of happiness as used in constitutional law. This right includes personal freedom of contract exemption from oppression or insidious discrimination, the right to follow ones individual preference in the choice of an occupation and the application of his energies, liberty of conscience, and the right to enjoy the domestic relation and the privileges of the family and the home. Butcher Union ect Co vs Crescent City Live Stock, etc. co. 4 s. Ct 652.111 us 746 28 led 585.

I believe that my civil rights have been violated by the United States District Court and the United States Justice Department and FHA.